TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~284~~ 92

JUSTO GARCIA Y LEON, PLAINTIFF IN ERROR,

vs.

JUAN OLIVER.

IN ERROR TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF LOUISIANA.

FILED NOVEMBER 16, 1869.

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1 State of Louisiana, seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

Petition.—Filed January 15th, 1869.

To the honorable the judge of the seventh district court in and for the parish of Orleans:

The petition of Juan Oliver, who resides in the city of New Orleans, respectfully represents—

That Justo Garcia y Leon, who also resides in this city, is
2 justly and truly indebted to your petitioner in the full sum of two hundred and sixty-nine dollars and fifty-five cents, ($269 55), exclusive of interest and costs, for this, to wit:

That your petitioner, on or about the 8th day of August, 1868, brought a suit against one Joseph Maristany, sr., in this honorable court, for the sum of two hundred and thirty-three dollars, with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, and caused to be sequestered in said suit by the civil sheriff of the parish of Orleans the Spanish schooner "Gallego," her tackle, apparel, and furniture, which then belonged to the said Joseph Maristany, senior, and upon which your petitioner had then the mariners' lien and privilege, according to the laws of Louisiana; that said [that said] schooner was bonded by the said Maristany, and released by the sheriff on the 11th of August, 1868, upon the said Maristany's giving bond and security, in favor of said sheriff, for the sum of three hundred and fifty dollars, with said Justo Garcia y Leon as surety, and
3 conditioned as follows, to wit:

"That if the defendant, Joseph Maristany, senior, should send the above-described property, that is, said schooner, her tackle, apparel, and furniture, out of the jurisdiction of this court, that he would not make an improper use of it, and that he would faithfully present the same in case he should be decreed to restore the same to the plaintiff, or should satisfy such judgment as may be rendered in the suit then pending, as above mentioned, then said obligation to be void; or else to remain in full force."

That said forthcoming bond was, the same day, transferred, assigned, and set over by said sheriff to your petitioner; that in due course of law, to wit, on or about the 7th November following, your petitioner obtained a final judgment against said Joseph Maristany, senior, for the amount claimed in said suit by your petitioner, with lien and privilege upon the property sequestered; that execution issued thereon soon thereafter; that demand was made of the said Joseph Mar-
4 istany, sennior, by the said sheriff, for the delivery of the said schooner, without any effect; and that said vessel, which was fully worth ten thousand dollars when she was sequestered, soon thereafter sailed for a foreign port, and is now beyond the process of this honorable court; that your petitioner has now his recourse against the said forthcoming bond, which is forfeited, to be paid the amount of his judgment aforesaid, which, together with clerk's and sheriff's costs, amounts to the aforesaid sum of two hundred and sixty-nine dollars

and fifty-five cents, exclusive of interest and costs, as the whole will more fully appear, together with all other necessary particulars, from the case of Juan Oliver vs. Joseph Maristany, senior, known on the docket of this honorable court as suit No. 79, and the two certificates of costs hereto annexed, and made part of this petition; and that although often amicably demanded, the defendant, Justo Garcia y Leon, has heretofore failed and neglected to pay said judgment, interest, and costs.

Wherefore your petitioner respectfully prays that the said
5 Justo Garcia y Leon be cited to appear and answer this petition, and that after due proceedings had, there be judgment in favor of your petitioner, against said Justo Garcia y Leon, defendant herein, for the aforesaid sum of two hundred and sixty-nine dollars and fifty-five cents, ($269 55,) with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, and your petitioner prays for general relief; and as in duty bound, &c.

(Signed) SAMBOLA & DUCROS, *Att'ys.*

Clerk's bill of costs.—Annexed to and filed with the petition.

The State of Louisiana, sèventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JOS. MARISTANY, SR. } No. 79.

NEW ORLEANS, ———, 186 .

Received payment.

——— ———.

I hereby certify that the taxed costs in this case amount to
6 twenty-six $\frac{30}{100}$ dollars.

Clerk's office, this 13th January, 1869.

(Signed) H. J. DUSSOR, *D'y Cl'k.*

$26 30. Sambola & Ducros, Attorneys.

Sheriff's bill of costs.—Annexed to and filed with the petition.

——— ———, attorney.

Sheriff's office, parish of Orleans, 7th district court for the parish of Orleans.

JUAN OLIVER
vs.
JOS. MARISTANY, SR. } No. 79.

I do hereby certify that the sheriff's fees in this case amount to ten dollars and 25 cents.

Sheriff's office, this 13th day of Jan'y, 1869.

(Signed) PAUL T. ABADIE,
Deputy Sheriff.

Received payment. ——— ———,
Deputy Sheriff.

7 *Citation to Justo Garcia y Leon.*

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

Mr. Justo Garcia y Leon, of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Thomas Wharton Collens, judge of the said court, the 15th day of January, in the year of our Lord 1869.

(Signed) A. D. BERNOUDY, *Clerk.*

8 *Sheriff's return.*

Received January 15th, 1869, and on the 16th day of the same month and year served copy of the within citation and accompanying petition, personally, on Justo Garcia y Leon, defendant herein.

Ret'd same day.

(Signed) PHIL. LACOSTE, *D'y Sheriff.*

Default.—Extract from the minutes of Thursday, 28th January, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

On motion of Sambola and Ducros, attorneys for the plaintiff in this case, upon showing to the court that the defendant therein has
9 failed to answer, though duly cited, it is ordered that judgment by default be entered against him in said case.

Default set aside.—Extract from the minutes of Saturday, 30th January, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

On motion of Hyman, Wallace & Handlin, attorneys for the defendant in this case, and upon filing pleas to the jurisdiction of this court, ratione materiæ, it is ordered that the judgment by default entered in this case be set aside.

Exception.—Filed January 30th, 1869.

10 Seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
J. GARCIA Y LEON. } No. 811.

And now comes the defendant and excepts to the plaintiff's action, and says that the same is based on an admiralty bond, in a proceeding in rem, over which this court has no jurisdiction ratione materiæ, and that said bond was taken coram non judice, and is void.

Wherefore he prays to be hence dismissed with costs, and for general relief.

(Signed) HYMAN, WALLACE & HANDLIN,
Att'ys for Defendant.

Order exceptions overruled.—Extract from the minutes of Saturday, February 20th, 1869.

Seventh district court for the parish of Orleans.

11 Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

The exception in this cause came on to-day for trial.
Present, P. A. Ducros, jr., for plaintiff.
" Hyman, for defendant.
When, after hearing pleadings, evidence, and counsel, the court considering the law and evidence to be with plaintiff, it is adjudged and decreed that said exception be overruled with costs.

Default.—Extract from the minutes of Wednesday, February 24th, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

12 In this case, on motion of counsel for plaintiff, upon showing to the court that the exception therein filed by defendant in said case was overruled; that the legal delays have elapsed; and that he has failed to file his answer, it is ordered that judgment by default be entered against said defendant in said case.

Order default set aside.—Extract from the minutes of Friday, 26th February, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

On motion of Hyman, Wallace and Handlin, attorneys for the
13 defendant in this case, it is ordered that the judgment by default herein be set aside, and the defendant's answer in said case now filed.

Answer.—Filed February 26th, 1869.

Seventh district court for the parish of Orleans.

OLIVER
vs.
GARCIA Y LEON. } No. 811.

And now comes the defendant, and for answer pleads the general denial; and that the bond sued on is null; that this court has no jurisdiction ratione materiæ, and has been enjoined by the United States circuit court.

Wherefore defendant refuses to defend himself further before this court, and files this as an answer.

(Signed) HYMAN, WALLACE & HANDLIN,
Att'ys for Defendant.

14 *Note of evidence.—Filed March 8th, 1869.*

In the seventh district court, &c., March 8th, 1869.—On trial this day.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

Counsel for plaintiff offers in evidence the record of suit No. 79 of the docket of this court; also the bond taken and the sheriff's return.

Mr. , witness for plaintiff, sworn and examined as to the value of the schooner "Gallego," sequestered.

Record No. 79.—Offered in evidence in the note of evidence by plaintiff.

15 Seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JOSEPH MARISTANY, SENIOR. } No. 79.

Petition.—Filed August 10th, 1868.

To the honorable the seventh district court for the parish of Orleans:

The petition of Juan Oliver, temporarily residing in the city of New Orleans, respectfully represents—

That Joseph Maristany, senior, who resides in this city, is justly

and truly indebted to your petitioner in the full sum of one hundred and fifty-five dollars in gold, or two hundred and thirty-three dollars in United States treasury notes, exclusive of interest, and costs, for this, to wit: That your petitioner, who is a sea pilot by profession, was engaged by the said Maristany in the port of Havana, on or about the
16 12th of June, 1868, to take charge, in that capacity, of the Spanish schooner "Gallego," belonging to defendant, and bound for this port and back again, for and in consideration of the monthly wages of fifty dollars in gold, which were a reasonable compensation for the services to be performed by your petitioner; that said schooner started from the port of "Havana" on the 7th of July following, and arrived at this port on or about the 24th of the same month and year; that your petitioner has faithfully performed his duty as pilot of said schooner, and was ready and willing to comply with his contract and carry back said vessel as pilot thereof, to the port of "Havana," as he had agreed and bound himself to do; but that the defendant, far from performing his part of the contract, violated the same, and without your petitioner's consent, and without any reason whatever, discharged your petitioner a few days ago, and forbade him to remain on board and continue his functions as pilot of said schooner; and that the defendant, by this open and
17 active violation of his contract, is liable in damages to your petitioner; that your petitioner has already incurred, in consequence of this breach of contract, an expense of twenty-five dollars, at least, for board and lodging here in this city, and will have to pay the sum of thirty dollars in gold, at least, for his passage back to Havana; that the amount actually due your petitioner by the defendant, and for the payment of which your petitioner has a lien and privelege upon said schooner, her tackle, apparel, & furniture, and the proceeds of the sale thereof, is therefore the aforesaid sum of one hundred and fifty-five dollars in gold, or two hundred and thirty-three dollars in United States currency; and that although often amicably demanded, the defendant has failed and neglected to pay said debt.

Wherefore your petitioner respectfully prays that the defendant be cited to appear and answer this petition, and that after due proceedings had there be judgment in favor of your petitioner against said defendant for the aforesaid sum of one hundred and fifty-five dollars in
18 gold, or two hundred and thirty-three dollars in United States Treasury notes, with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, together with the sailor's lien and privelege on the property sequestered, and the proceeds of the sale thereof; and your petitioner prays for general relief; and as in duty bound, &c.

(Signed) SAMBOLA & DUCROS, *Att'ys.*

Affidavit.—Filed August 8th, 1868.

Juan Oliver, being duly sworn, deposes and says that Joseph Maristany, senior, is justly and truly indebted to affiant in the full sum of one hundred and forty-three dollars and forty-four cents in gold, exclusive of interest and costs, for one month and twenty-six days' wages due him as pilot on board the Spanish schooner "Gallego," from
19 Havana to this port, at the rate of fifty dollars per month, and for damages; that the said Joseph Maristany, senior, is the owner & proprietor of said schooner; that for the payment of said wages and damages now due and owing your affiant has a lien and privelege on said vessel, and affiant apprehends that said vessel will be removed out

of this State before he can have the benefit of his said lien and pr lege; and that, in fact, affiant knows that said schooner will start this evening for the port of Havana.

Wherefore affiant prays for a writ of sequestration, upon furnishing bond and security, conditioned according to law.

(Signed) JUAN OLIVER.

Sworn to & subscribed before me on this the 8th day of August, 1868.

(Signed) GASP. JAMES, *D'y Clk.*

Order.

Let a writ of sequestration issue in this case as prayed for,
20 and according to law, upon the plaintiff giving bond, with good and solvent security, conditioned as the law directs, in the sum of three hundred and fifty dollars.

New Orleans, 8th August, 1868.

(Signed) T. WHARTON COLLENS, *Judge.*

Bond.—Filed August 8th, 1868.

Know all men by these presents that we, Juan Oliver as principal, and Thomas Jorda as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Joseph Maristany, senior, & al., in the sum of three hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Joseph Maristany, senior, & als., their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators,
21 firmly by these presents, sealed with our seals and dated the 8th of August, in the year of our Lord 1868.

Whereas the said Juan Oliver has this day presented a petition to the honorable the seventh district court for the parish of Orleans, praying a writ of sequestration:

Now, the condition of the above obligation is that we, the above-bound Juan Oliver and Thomas Jorda, will well and truly pay to the said Joseph Maristany, senior, & al., the defendant in said sequestration, all such damages as they may recover against us in case it should be decided that the sequestration was wrongfully obtained.

(Signed) JUAN OLIVER. [L. S.]
(Signed) THOS. JORDA. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) GASP. JAMES.

Citation.

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

22 JUAN OLIVER
vs.
JOSEPH MARISTANY, SENIOR. } No. 79.

Mr. Joseph Maristany, senior:

You are hereby summoned to comply with the demand contained in

the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Thomas Wharton Collens, judge of the said court, the 10th day of August, in the year of our Lord 1868.

(Signed) G. L. BERNOUDY, *D'y Clerk.*

Sheriff's return.

Received August 11th, 1868, and on same day, month, and year served copy of this citation and accompanying petition on Joseph
23 Maristany, senior, defendant herein, by leaving the same on board of the schooner "Allego," in the hands of Pablo Pons, mate of said schooner, whose name and capacity I learned by interrogating him. The service was made in the manner above stated, the defendant herein being captain of said schooner, and having his domicil thereon, but being absent therefrom at the time of service.

Ret. same day.

(Signed) GEO. B. MAHAN, *D'y Sheriff.*

Writ of sequestration.

State of Louisiana, seventh district court for the parish of Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the seventh district court for the parish of Orleans, to
24 sequester and take into your possession and safe-keeping, until the further order of this court, the Spanish schooner "Gallego," her tackle, apparel, &c.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the Honorable Thomas Wharton Collens, judge of our said court, this 8th day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-third year of the independence of the United States.

(Signed) GASP. JAMES, *D'y Clerk.*

Sheriff's return.

Received August 8th, 1868, and on the same day seized and took into my possession the schooner "Gallego," her tackle, apparel, furniture, &c., as will more fully appear by reference to the within notice of
25 seizure hereto attached and made part hereof; and subsequently, on the 11th of same month and year, said seizure was released, defendant furnishing, as per within annexed order of court, in the sum of three hundred and fifty dollars, with Justo Garcia y Leon as security.

Order, bond, and writ returned same day.

Sheriff's fees for this writ, $2 00.

(Signed) W. WALSH, *D'y Sh'ff.*

JUSTO GARCIA Y LEON VS. JUAN OLIVER.

Motion and order to bond.—Filed August 8th, 1868.

Seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JOSEPH MARISTANY, SENIOR. } No. 79.

On motion of L. Lombard, of counsel for defendant, and on suggesting to the court, that by virtue of a writ of sequestration issued in the above-entitled case, directed to the sheriff of the parish of Or-
26 leans, for the sum of one hundred and forty-three dollars and forty-four cents, his schooner "Gallego" has been seized and taken possession of by the sheriff of the aforesaid parish of Orleans, which he desires to bond, it is ordered by the court that said schooner "Gallego" be released on appearer furnishing bond, with good and solvent security, in the sum of three hundred and fifty dollars, conditioned as the law requires.

Bond.—Filed August 12th, 1868.

Know all men that we, Joseph Maristany as principal, and Justo Garcia y Leon as security, are held unto Thomas L. Maxwell, sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of three hundred and fifty dollars, ($350 00;) for the payment whereof to the said Thomas L. Maxwell, sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respectively, by these presents, as witness our respect-
27 ive names hereunto affixed at New Orleans, this 11th day of August, in the year eighteen hundred and sixty-eight.

Whereas in and virtue of a writ of sequestration, issued out of the honorable the seventh district court for the parish of Orleans, at the suit of Manuel Pijuan vs. Joseph Maristany, senior, and numbered 79 on the docket of the said court, and which suit is now pending therein, the following described property, to wit, the schooner "Gallego," her tackle, apparel, furniture, &c., has been seized, taken into custody of said sheriff, and detained according to law; but the same has been released and delivered to the defendant upon the appearance of the defendant in the said suit, and delivering to the said Thos. L. Maxwell the present obligation.

The condition of which is such, that if the defendant shall not send the above-described property out of the jurisdiction of the court; that he will not make an improper use of it; and that he will faithfully present the same in case he should be decreed to restore the same to the
28 plaintiff, or shall satisfy such judgment as may be rendered in the suit pending as above mentioned, then this obligation to be void; or else to remain in full force.

(Signed) JOSÉ MARISTANY.
(Signed) JUSTO GARCIA Y LEON.

Signed and delivered in presence of—
(Signed) PAUL T. ABADIE.

Transfer.— Written on back of bond.

NEW ORLEANS, *August 11th*, 1868.

STATE OF LOUISIANA, *Parish of Orleans:*

I do hereby transfer, assign, and set over to plaintiff herein, all my right, title, and interest in and to the within bond.

(Signed) For THOMAS L. MAXWELL,
Sheriff Parish of Orleans,
Per PAUL T. ABADIE, *D'y Sheriff.*

29 *Default.—Extract from the minutes of Wednesday, November 4th, 1868.*

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JOS. MARISTANY, SR. } No. 811.

On motion of Sambola and Ducros, attorneys for the plaintiff in this case, upon showing to the court that the defendant therein, though duly cited, has failed to answer, it is now ordered that judgment by default be entered against him.

Judgment.

Seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JOSEPH MARISTANY, SENIOR. } No. 79.

Judgment entered Nov'b'r 7th, 1868.

On motion of Sambola and Ducros, attorneys for the plaintiff
30 in this cause, upon submitting to the court due proof in support of his demand, and the law and evidence being in favor of plaintiff, it is adjudged and decreed that the judgment by default herein entered on the 4th instant be now confirmed; that the plaintiff, Juan Oliver, do have and recover of the defendant, Joseph Maristany, senior, the sum of two hundred and thirty-three dollars, with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, with sailors' lien and privelege on the property sequestered herein, or its proceeds.

Judgment signed November 12th, 1868.

(Signed) T. WHARTON COLLENS, *Judge.*

Fi. fa.

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

31 JUAN OLIVER
vs.
JOSEPH MARISTANY, SENIOR. } No. 79.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you that by seizure and sale of the property, real and

personal, rights and credits, of defendant, in the manner prescribed by law, you cause to be made the sum of two hundred and thirty-three dollars, with five per cent. interest thereon from the 10th August, 1868, until paid; and also the sum of eighteen dollars and ten cents, costs, as well as your own costs and charges, to satisfy a judgment against the said defendant in our seventh district court for the parish of Orleans, on the seventh day of November, 1868, in favor of Juan Oliver, with sailors' lien and privelege on the property sequestered herein, or its proceeds; and how you shall have executed this writ, you make return to our said court in seventy days, as the law directs.

32 Witness the Honorable Thomas Wharton Collens, judge of said court, this twelfth day of November, in the year of our Lord 1868.

[SEAL.] (Signed) G. L. BERNOUDY,
D'y Clerk.

Sheriff's return.

Received November 13th, 1868. No property found. After due demand made of the defendants, and of the attorneys for plaintiff, at the request of plaintiff's attorney, called upon Justo Garcia y Leon, surety, to point out property belonging to the defendant, which he declared himself unable to do.

Ret'd Jan'y 22nd, 1869.

(Signed) W. WALSH, *D'y Sh'ff.*

Order rule.—Filed November 18th, 1868.

33 Seventh district court for the parish of Orleans.

MANUEL PIJUAN
vs.
JOSEPH MARISTANY. } No. 78.

JUAN OLIVER
vs.
THE SAME. } No. 79.

MARIANAN GALCERAN
vs.
SAME. } No. 80.

On motion of Hyman, Wallace and Handlin, attorneys for Joseph Maristany, and on suggesting to the court that the sheriff of the parish of Orleans has notified defendant that he holds fi. fa. No. 78 for $383 00, fi. fa. No. 79 for $233 00, and fi. fa. No. 80 for $173 00 against defendant, and is about to seize his property, it is ordered by the court that said sheriff show cause on the 25th November, 1868, at 10 o'clock a. m., why said fi. fa's should not be quashed, and why he should not suspend all proceedings under the same on the following grounds, to wit:

34 1st. Because said writs are void on the face of the papers in the record, which show that it is a matter of maritime jurisdiction over which this court has no jurisdiction ratione materiæ.

2nd. There is no judgment or judgments against defendant, and said sheriff is a trespasser.

Order continuing rule.—Extract from the minutes of Wednesday, November 25th, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JOSEPH MARISTANY, SR. } No. 79.

The rule herein taken on the 18th instant, in behalf of Joseph Maristany, on the sheriff, was called up to-day—W. W. Handlin, for plaintiff in rule; J. K. Dick representing the sheriff—when, after hearing
35 pleadings and parties, it is ordered that the same be continued to the 3d December next, at 10 a. m.

Answer of sheriff to rule.—Filed November 30th, 1868.

7th district court.

MANUEL PUJUAN, 78,
JUAN OLIVER, 79,
MARIANO GALCERANO, 80,
vs.
JOSEPH MARISTANY.

Thos. L. Maxwell, sheriff, made defendant herein, excepts to any proceedings against him, by rule or otherwise, on the grounds that he is no party in interest in said suits, or the writs therein issued. That the plaintiffs above-named caused the said writs to issue, and are the only parties in interest, and should have been made parties to this rule.

He denies having committed any act of trespass, and if he has
36 done any act in the premises, it was done in obedience to orders from this court, and pursuant to law regulating sheriffs' duties relative to writs of fi. fa.

Wherefore he prays that said rule, so far as it tends to make him a party to any litigation whatever, be dismissed, and that plaintiffs above named be notified of these proceedings, and made parties thereto; and that they have notice of trial of rule, viz., for December 3d, 1868, at 10 o'clock a. m.

(Signed) THOS. L. MAXWELL, *Sheriff*,
P'r J. F. DICK, *Deputy*.

Order continuing rule.—Extract from the minutes of Thursday, December 3d, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JOS. MARISTANY, SR. } No. 79.

37 The rule herein, by Joseph Maristany, on the sheriff was called up this day—W. W. Handlin for plaintiff in rule; J. K. Dick for the sheriff; P. A. Ducros, jr., representing plaintiff in suit—and it ap-

pearing that the plaintiff in this case, who is made party to said rule, has not been notified hereof, it is ordered that said rule be continued to Thursday, 10th instant, at 10 a. m.; and that the plaintiff in this case be served with a copy of the rule, the answer thereto, and of the order.

Document, (notice of seizure.)—Filed December 10th, 1868.

New Orleans, Aug. 8th, 1868. State of Louisiana, sheriff's office, parish of Orleans, in the 7th district court for the parish of Orleans.—
38 Nos. 78, 79, 80.

MANUEL PIJUAN
vs.
JOSEPH MARISTANY, SENIOR.

JUAN OLIVER
vs.
SAME.

MARIANO GALCERANO
vs.
SAME.

To Joseph Maristany, senior:

Please to take notice that by virtue of 3 writs of sequestration, issued in the above-mentioned suits, I have seized and taken into my possession the Spanish schooner Gallego, her tackle, apparel, &c., &c.

(Signed) S. M. BURNETT, *D'y Sheriff.*

Order rule dismissed.—Extract from the minutes of Thursday, 10th of December, 1868.

39 Seventh district court of the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JOSEPH MARISTANY, SR. } No. 79.

The rule taken to quash the writs of fieri facias, issued in this case came up to-day for trial.

Present: W. W. Handlin for plaintiff in rule.
" J. K. Dick, deputy, representing the sheriff.
" P. A. Ducros, for other def'd't in rule.

When, after hearing pleadings, evidence, and argument of counsel, and for the reasons assigned in the written opinion of the court, delivered and filed in the case of John Ruth & Co. vs. st'b't J. D. Perry, &c., No. 117, on the docket of this court, it is adjudged and decreed that said rule be dismissed, with costs.

Rule for a new trial.—Filed December 11th, 1868.

40 Seventh district court of the parish of Orleans.

MANUEL PIJUAN & AL.
vs.
JOSEPH MARISTANY.

On motion of Hyman, Wallace and Handlin, attorneys for Joseph

Maristany, plaintiff in rule, against the sheriff to quash the fi. fa's herein as nullities, it is ordered by the court that said sheriff and others made parties to said rule by him, show cause on Saturday, 19th December, 1868, at 10 o'clock a. m., why a new trial should not be granted on the following grounds:

1st. Because the judgment dismissing said rule is contrary to law and evidence, since the record shows that this is a matter of admiralty jurisdiction which belongs exclusively to the federal courts, it being for seamen's wages.

2nd. Because said judgment overrules and totally ignores the
41 decision of the supreme court of Louisiana, and that also of the Supreme Court of the United States.

Sheriff's return.

Received December 12th, 1868, and on the same day the sheriff of the parish of Orleans accepted the service of copy of the within rule; and on the same day, served similar copies on J. Olivier, Manuel Pijuan, and M. Galceran, through A. Sambola, their attorney, who accepted service thereof.

Ret. same day.

(Signed) PAUL T. ABADIE,
D'y Sheriff.

Rule dismissed.—Extract from the minutes of Saturday, December 19th, 1868.

Seventh district court for the parish of Orleans.

42 Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER
vs.
JOS. MARISTANY, SR. } No. 79.

The rule taken in this case for a new trial, came on this day.

W. W. Handlin for pl't'ff in rule.

Sambola & Ducros " def'd't therein.

When, after hearing pleadings and argument, for the reasons assigned in open court, and the court seeing no error in the judgment rendered, ordered that said rule be dismissed with costs.

(End of suit No. 79, offered in evidence in the note of evidence.)

Bond and sheriff's return.—Offered in evidence by plaintiff in note of evidence.

(See page 26, &c., of this transcript, where it is already copied.)

43 *No.* 811, *(resumed.)—Judgment.*

Seventh district court for the parish of Orleans.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811.

Judgment entered 8th March, 1869.

When, after hearing pleadings and evidence, and by reason of the law

and evidence being with plaintiff, it is adjudged and decreed that there be judgment herein in favor of plaintiff, Juan Oliver, and against the defendant, Justo Garcia y Leon, for the sum of two hundred and sixty-nine and $\frac{55}{100}$ dollars, with five per cent. interest from the 10th of August, 1868, until paid, & costs of suit.

Judgment signed 19th March, 1869.

(Signed) T. WHARTON COLLENS, *Judge.*

44 *Rule for a new trial.—Filed March 11th, 1869.*

Seventh district court of the parish of Orleans, March 11th, 1869.

OLIVER *vs.* GARCIA Y LEON. } No. 811.

On motion of Hyman, Wallace and Handlin, attorneys for defendant, and, on suggesting to the court that the judgment herein is contrary to law and evidence, it is ordered by the court that plaintiff show cause on the 18th instant, at 10 o'clock a. m., why a new trial should not be granted.

Sheriff's return.

Received March 12th, 1869, and on the 13th day of same month and year served copy of the within rule on Oliver, plaintiff herein,
45 through the firm of Sambola & Ducros, attorneys, by personal service on —— Ducros, esq., a member of said firm, who accepted the same.

Ret'd same day.

(Signed) A. F. LYND, *D'y Sheriff.*

Order rule dismissed.—Extract from the minutes of Thursday, March 18th, 1869.

Seventh district court for parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

JUAN OLIVER *vs.* JUSTO GARCIA Y LEON. } No. 811.

The rule taken in this case for a new trial came on this day—present, Sambola & Ducros for plaintiff; defendant, and plaintiff in rule, absent, not represented—when, after hearing pleadings and evidence, and no cause been shown why a new trial should be granted, it is ordered
46 that said rule be dismissed with costs.

Petition for writ of error.—Filed March 20th, 1869.

To the Honorable T. Wharton Collens, judge of the seventh district court for the parish of Orleans, State of Louisiana:

Seventh district court for the parish of Orleans.

JUAN OLIVER *vs.* JUSTO GARCIA Y LEON. } No. 811.

The petition of Justo Garcia y Leon respectfully shows and states

that he was made party to the above-entitled suit as security for the forthcoming of the Spanish vessel "Gallego," which suit was pending in in this court, and that said court is the highest court of said State in which a decision in the said suit could be had.

47 That on the 19th day of March, A. D 1869, a final judgment was rendered in said suit by the said court, whereby your petitioner, as said party defendant, is aggrieved, and which your petitioner believes to be erroneous.

That in said suit was drawn in question the validity of a statute of the United States, and the decision was against its validity.

That in said suit was drawn in question a title, right, privelege, and immunity claimed under the Constitution and a statute of the United States, and the decision was against such title, right, privelege, and immunity.

That your petitioner is desirous of having said judgment revised by the Supreme Court of the United States.

Wherefore your petitioner prays that you will allow a writ of error in said suit, returnable before the said Supreme Court of the United States on the first day of its next term.

(Signed) HYMAN, WALLACE & HANDLIN,
Attorneys for Justo Garcia y Leon.

48 *Order.*

I allow the writ of error as prayed for.
March 20th, 1869.
(Signed) T. WHARTON COLLENS, *Judge.*

Endorsement on copy of writ of error.—Filed March 20th, 1869.

Seventh district court.

JUAN OLIVER
vs.
JUSTO GARCIA Y LEON. } No. 811, writ of error.

Copy of writ of error lodged in the clerk's office of the seventh district court for the parish of Orleans, State of Louisiana, in pursuance the statute in such cases made and provided, this 20th day of March, 1869.
(Signed) HYMAN, WALLACE & HANDLIN,
Attorneys of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the seventh district court for the parish of Orleans, State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before the same, being the highest court of law in the State of Louisiana in which a decision could be had in the said suit between Juan Oliver and Justo Garcia y Leon, No. 811 of the docket of said court, a manifest error hath happened, to the great damage of the said Justo Garcia y Leon, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given,

that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 20th of March, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) Seventh dist. court. No. 811. Juan Oliver vs. Justo Garcia y Leon. Writ of error.
Filed March 20th, 1869.

H. J. DUSSOR, *D'y Clk.*

THE UNITED STATES OF AMERICA, *Louisiana:*
The President of the United States to Juan Oliver, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the seventh district court for the parish of Orleans, State of Louisiana, wherein Justo Garcia y Leon is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable ——— ———, Chief Justice of the Supreme Court of the United States, this twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] T. WHARTON COLLENS,
Judge of the Seventh District Court for the Parish of Orleans.

(Indorsed:) Seventh district court for the parish of Orleans, Louisiana. No. 811. Juan Oliver vs. Justo Garcia y Leon. Citation. To be served on def't in error, Juan Oliver, an absentee, through P. A. Ducros, att'y.

Sheriff's return.

Received July 16, '69, and on the same day, month, & year served a copy of the within citation on Juan Oliver, defendant in error, through P. A. Ducros, attorney for defendant in error, personally, said defendant in error being an absentee.
Ret'd same day.

GEO. H. TARDY, *D'y Sh'ff.*

Sworn to & subscribed before me this 16th day of July, A. D. 1869.
A. D. BERNOUDY,
Clerk 7th Dist. Court for the Parish of Orleans.

49 *Bond for writ of error.—Filed 20th March*, 1869.

Know all men by these presents that we, Justo Garcia y Leon, principal, and T. Avendano and José Martinez del Campo as sureties, are held and firmly bound unto Juan Oliver in the full and just sum of ($350) three hundred and fifty dollars, to be paid to the said Juan Oliver, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 20th day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a seventh district court for the parish of Orleans, State of Louisiana, holding sessions for said parish and State, in a suit depending in said court, wherein Juan Oliver was plaintiff and Justo Garcia y Leon was defendant, and judgment was rendered
50 against the said Justo Garcia y Leon, defendant, and the said Justo Garcia y Leon having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Juan Oliver, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said Justo Garcia y Leon shall prosecute his said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JUSTO GARCIA Y LEON. [L. S.]
" T. AVENDANO. [L. S.]
" JOSE MARTINEZ DEL CAMPO. [L. S.]

Sealed and delivered in the presence of—

(Indorsed:) Bond taken and approved March 20th, 1869.
(Signed) T. WHARTON COLLENS, *Judge*.

51 *Clerk's certificate.*

State of Louisiana, seventh district court for the parish of Orleans.

I, A. D. Bernoudy, clerk of the seventh district court for the parish of Orleans, duly commissioned and sworn as such, do hereby certify that the foregoing fifty (50) pages do contain a full and complete transcript of the record of the case wherein Juan Oliver is plaintiff and Justo Garcia y Leon is defendant, instituted in this court, and now on the records thereof under the No. 811.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this sixth (6th) day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the independence
52 of the United States of America.

[SEAL.] A. D. BERNOUDY, *Clerk*.

Certificate of judge to the foregoing clerk's certificate.

I, Thomas Wharton Collens, sole judge of the seventh district court for the parish of Orleans, do hereby certify that A. D. Bernoudy is clerk of the said court, and that the signature, "A. D. Bernoudy," to

the foregoing certificate is in the proper handwriting of him the said clerk; to his official acts as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on this sixth
53 day of August, 1869, in the year of our Lord one thousand eight hundred and sixty-nine.

T. WHARTON COLLENS, *Judge.*

Clerk's certificate to the foregoing.

I, A. D. Bernoudy, clerk of the seventh district court for the parish of Orleans, duly commissioned and sworn as such, do hereby certify that the Honorable Thomas Wharton Collens, whose name is signed to the foregoing certificate, is the sole judge of this court, and that he is duly commissioned and qualified as such, and I do further certify that said court is a court of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this sixth day of August, in the year of our Lord one thousand eight hundred and
54 sixty-nine, and in the ninety-fourth year of the independence of the United States of America.

[SEAL.] A. D. BERNOUDY, *Clerk.*

(Indorsement on cover:) No. 284. Justo Garcia y Leon, plaintiff in error, vs. Juan Oliver. Louisiana 7th district court.

Filed 16th November, 1869.

SUPREME COURT
OF THE UNITED STATES.

December Term 1869.

JUSTO GARCIA Y LEON—Plaintiff in Error,

Vs. } No.

MANUEL PIJUAN—Defendant in Error.

SAME

Vs. } No.

JUAN OLIVER.

SAME

Vs. } No.

MARIANO GALCERAN.

Brief of Counsel for Plaintiff in Error.

In these three cases, Plaintiff in Error was sued and judgment obtained against him as security, on a judicial bond in each case given *in limine litis* in the *State Court* (the 7th District Court of New Orleans) for the forth coming of the Spanish vessel, *Gallego*, which was seized by order of said Court in suits against the master Maristany, desigated as owner, by defendants in Error, who claimed a lien and

privilege on said vessel for seamen's wages. The Master made no appearance and was condemned by default. These suits were then commenced against Plaintiff in Error as security on the bonds for the forthcoming of the vessel. He filed the following exception :

"And now comes the defendant and excepts to the Plaintiff's action, and says that the same is based on an admiralty bond, in a proceeding *in rem*, over which this Court has no jurisdiction *ratione materiæ*, and that said bond was taken *coram non judice*, and is void."

The exception and a subsequent answer were overruled and judgment rendered, from which the writs of Error are taken.

Even if the State Court could entertain a personal action against the owner, it had no jurisdiction over the vessel by conservatory writ and proceeding *in rem* to enforce a maritime lien by seizure before judgment.

This question seems to be settled in the late case of the steamboat Belfast vs. Boon & Co., and in the case of the Moses Taylor, 4 Wall. 411. Having no jurisdiction, therefore, over the vessel in a proceeding *in rem*, a *judicial bond*, given in that Court for its delivery is null and void; and the Court having no authority of law, or jurisdiction over the subject matter, the *order* of the Court to bond is also an absolute nullity.

"The rule, that as one binds himself he shall remain bound, may be true in mere conventional obligations; but the effect of *judicial* bonds must be tested by the law directing them to be taken. That which is super-added must

be rejected, and that which is omitted supplied. So, if there be no law authorizing such a bond to be taken, or if the prerequisites required for the taking thereof be not fulfilled, the bond will not bind; there is error and the consideration fails." Hennen's La. Digest. New Edition, 2 vol. p. 1023, *verbo* 6.

Respectfully submitted,

CALEB CUSHING,
JOHN T. DREW.
Counsel for Plaintiff in Error.

Supreme Court of the United States.

DECEMBER TERM, 1869.

JUSTO GARCIA Y LEON, PLAINTIFF IN ERROR. } No
vs.
MANUEL PIJUAN, DEFENDANT IN ERROR. }

SAME
vs.
JUAN OLIVER. } No.

SAME
vs.
MARIANO GALCERAN. } No

BRIEF OF DEFENDANTS IN ERROR.

Supreme Court of the United States.

DECEMBER TERM, 1869.

JUSTO GARCIA Y LEON, PLAINTIFF IN ERROR. } No
vs.
MANUEL PIJUAN, DEFENDANT IN ERROR. }

SAME
vs.
JUAN OLIVER. } No.

SAME
vs.
MARIANO GALCERAN. | No

BRIEF OF DEFENDANTS IN ERROR.

The Defendants in Error, brought suits *in personam*, in the Seventh District Court of the Parish of Orleans, State of Louisiana, on the 8th of August, 1868, against one Joseph Maristany, a resident of the City of New Orleans, and sole owner of the Spanish Schooner "Gallego," to recover mariner's wages, and had said schooner, which was subject to a lien and privelege in their favor, according to the laws of Louisiana, similar

in this respect to the principles of the Admiralty Law, sequestered by the Sheriff of the Parish of Orleans.

The writ of sequestration was levied upon said schooner, which was afterwards released upon the said Maristany's giving a forthcoming bond, with the Plaintiff in Error, as surety, for the faithful return of the vessel to the sheriff on the final judgment.

The owner of the vessel sequestered was persoually sued and cited, and in due course of law, judgments were rendered by default against him *in personam*, for the amounts claimed, with the mariner's lien and privilege upon the property sequestered.

A writ of *fieri facias* was then issued, and demand made without effect, of the defendant in execution, by the sheriff aforesaid, for the return of the property bonded.

On the return of the sheriff, that the property bonded could not be found, suits were then brought in the same court by the Defendants in Error, to enforce *in personam* the obligation of said forthcoming bonds against the surety thereon, and after the question of jurisdiction was urged and overruled, judgments were rendered *in personam*, in favor of the Defendants in Error, against said Surety, for the amounts fixed by the original judgments.

From the judgments thus rendered against the surety on the forthcoming bonds, the present appeal by writ of error was taken.

The right of mariners to bring suits *in personam* against the owners of the vessel on which they have earned their wages, in the State Courts, is expressly re-

served to them by the Judiciary Act of 1789, under the proviso, "*saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.*

This is the right which has been exercised in this case. The Seventh District Court of the Parish of Orleans, had jurisdiction over the subject matter of the controversary, inasmuch as the suits were brought *in personam*, which is clearly a common law remedy, and judgments obtained personally against the owner of the vessel.

The writ of sequestration was issued as a mesne or *conservatory* process to preserve intact *pendente lite* a lien and privilege granted by law, and to secure the presence of the vessel within the territorial jurisdiction of the state court, until after the final judgments, to be then subjected to execution and sale, to satisfy said judgments, and inasmuch as said writ was only resorted to as a means of enabling the state court more effectually to exercise its lawful jurisdiction, and to secure in advance the execution of valid personal judgments on transitory property pledged by law to their payment, it follows as a necessary consequence that said writ was as lawful as the suit itself, to which it was a mere appendage or incident, and as the writ of *fieri facias* issued on said personal judgments, and of which said writ of sequestration was the mere precursor, and that the state court in granting it has not exceeded the bounds of its jurisdiction, or encroached in any manner on the province of the Federal Courts.

The only thing which the Federal Constitution and the Judiciary Act of 1789, seem to have taken

away from the state courts, is the "cognizance of civil causes of admiralty and maritime jurisdiction," when the same are sought to be brought solely *in rem*, against the offending vessel itself as a party defendant to the suit, according to the peculiar forms of the proceedings *in rem* of the Admiralty Courts, the judgments and sales of which are binding on the whole world, *erga omnes*.

The writ of sequestration has no analogy whatever with the admiralty process, as understood and defined by writers on admiralty law.

See Article 269 and following of the Louisiana Code of Practice.

It is not, nor can it be pretended that vessels are not liable to seizure under executions issued upon judgments rendered by state courts. How then can it be contended with any consistency, that a writ of attachment or any other mesne or conservatory process, which only anticipates and subserves the writ of *fieri facias*, cannot be lawfully resorted to, when sanctioned by the state law, to prevent the departure of the vessel, *pendente lite*, in order to subject it afterwards under execution, to the payment of the creditor's personal judgment, for which she is legally pledged?

The position assumed by the Plaintiff in Error, is untenable, and is plainly in opposition to the well settled jurisprudence of this country.

"When properly brought, the suit is against the owners of the vessel; *and in states where there are attachment laws, the plaintiff may attach any property not exempted from execution, belonging to the defendant.* The vessel is held under the attachment as the property

of the defendant, and not as the offending thing as in the case of a proceeding *in rem*." 7 *Wallace, p.* 645.

"The distinguishing and characteristic feature of such a suit, (one *in rem*,) is that the vessel or thing proceeded against, is itself seized and impleaded as the defendant. It is this dominion of the suit in admiralty over the vessel or thing itself, which gives to the title made under its decrees, validity against the whole world. *By the common law process, whether of mesne attachment or execution, property is reached only through a personal defendant*, and then only to the extent of his title."—4 *Wallace, p.* 427.

We, therefore, respectfully pray that the judgments appealed from, do remain undisturbed by the decree of this Honorable Court.

Respectfully submitted,

MANUEL PIJUAN.
JUAN OLIVER,
MARIANO GALCERAN.

Defendants in Error.